What - if anything - is undermining the European Social Model?

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Veröffentlichungsversion / Published Version
Arbeitspapier / working paper

Zur Verfügung gestellt in Kooperation mit / provided in cooperation with:
SSG Sozialwissenschaften, USB Köln

WZB

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discussion paper

May 2010

Order-No.:
SP I 2010 – 202

Research Area
Education, Work, and Life Chances

Research Unit
Inequality and Social Integration

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Abstract

The notion of a European social model assumes that European societies have certain features in common which distinguish them positively from the United States, among them most notably the social partnership in labour relations, redistributive welfare state schemes, and cohesive societies with a low degree of social inequality. The paper examines to what extent the social reality in the EU conforms to this normative image and what challenges imperil the sustainability of the European social model. Special attention is drawn to the influence of supranational decision-making in the European Union and to the role of the European Court of Justice. It is shown that Court rulings imperil the viability of national social programs, because they open the schemes to transnational access even though they continue to be nationally financed. This is also in tension with the solidarity concepts of European citizens which continue to be framed in terms of national citizenship. As a possible solution to these tensions, the strengthening of the participation rights of national parliaments and governments on the European level is advocated.

Zusammenfassung

Das Konzept des Europäischen Sozialmodells wird als normative Leitidee definiert, der zufolge die Europäische Union sich als „USA plus“ verstehen lässt. Während Schlüsselcharakteristika wie Marktwirtschaft, Demokratie und offene Gesellschaft Europa und die USA verbinden, haben europäische Gesellschaften darüber hinaus ihrem Anspruch nach aber einige Merkmale gemeinsam, die sie von den USA unterscheiden, nämlich die Sozialpartnerschaft, den umverteilenden Sozialstaat und den größeren gesellschaftlichen Zusammenhalt mit vergleichsweise geringer Ungleichheit. Untersucht wird, inwiefern diese normative Idee der empirischen Realität entspricht und welche Herausforderungen die Nachhaltigkeit des europäischen Sozialmodells gefährden. Das besondere Augenmerk gilt hier dem Einfluss supranationaler Entwicklungen in der Europäischen Union und insbesondere der Rechtsprechung des Europäischen Gerichtshofs. Es wird gezeigt, dass die Rechtsprechung des EuGH häufig auf die transnationale Öffnung sozialer Sicherungsprogramme hinausläuft, die aber nach wie vor nationalstaatlich finanziert werden. Supranationale Entscheidungen auf EU-Ebene geraten damit zunehmend in Widerspruch mit nationalstaatlichen Institutionen sowie auch den Solidaritätsvorstellungen europäischer Bürger, die nach wie vor an der nationalen Staatsbürgerschaft festmachen. Ein möglicher Lösungsmechanismus wird in der Stärkung der Mitspracherechte nationaler Parlamente und Regierungen auf europäischer Ebene gesehen.

Contents

Introduction[1]

The European Social Model is a concept which is poorly defined, but cherished by many who are concerned that it might be imperilled. In this contribution I will first define the European Social Model as a normative concept that is developed in contrast to the United States and claims that European societies have certain features in common which distinguish them from the U.S. In a second step I will briefly apply three criteria that help to determine to what extent the normative idea conforms to social reality. In a third step I will discuss three types of challenges that jeopardise the social dimension of Europe. The first two of these – external challenges resulting from globalization, and internal challenges resulting from demographic change and from the transition to post-industrial labour markets – I will discuss only briefly. My focus will be on the third type of challenge resulting from supranational developments in the European Union and specifically from the roles played by the Commission and by the European Court of Justice. In a fourth and final step I will discuss the prospects for coping with the challenges through either strengthening supranational competences at the level of the EU or through revitalizing the role of national parliaments and governments. My argument is that there is a trend towards negative integration in the EU weakening national social policy functions which could only be counter-acted if there were a strong political will against it. Since such a strong will for countervailing supranational action can neither be found on the part of European elites nor on the part of national citizens, the only effective remedy consists in revitalizing the participation and the veto powers of national parliaments and governments in EU decision-making. This latter position is not only shared by many German scholars, but also by the German Constitutional Court in its 2009 ruling on the compatibility of the law ratifying the Lisbon Treaty with the German Constitution.

[1] This is the text of a lecture which was given at the Faculty of Social Sciences, Charles University, Prague, on 29 March 2010.

1. The normative idea of the European Social Model: Europe as "USA plus"

The 'European Social Model', though frequently referred to in politicians' speeches, is rarely defined with any precision. One of the perhaps clearest attempts at an official definition may be found in the Presidency Conclusions of the Nice European Council meeting of 2000, where annex 1 describing the European Social Agenda states:

> 'The European social model, characterised in particular by systems that offer a high level of social protection, by the importance of the social dialogue and by services of general interest covering activities vital for social cohesion, is today based, beyond the diversity of the Member States' social systems, on a common core of values' (European Council, 2000b).

Here we find four elements: (1) a high level of social protection with services of general interest; (2) the social dialogue, referring to coordinated policy making with collective agreements negotiated by the social partners; (3) an emphasis on social cohesion, and (4) a set of common core values. Official texts thus make it clear that the term European social model is to encompass more than a mere model of social policy. The documents rather make reference to embracive characteristics in the dimensions of state, economy, and society. Implicitly – and in more recent times also explicitly – the References term is often used to distinguish a European type of society from the type of society in the United States (cf. Albert, 1992).[2]

It appears, then, that the idea of a European Social Model implies the normative notion that the European Union should be conceived of as a 'USA *plus*', i.e. as a type of society which delivers everything the United States has to offer, but also some elements in addition which make a society worth living in and which the U.S. lack (Alber 2006) (figure 1). In the dimension of the economy, this means that Europe combines the growth dynamic of a market economy with the coordinating social dialogue of the collective bargaining partners and with ecologically sustainable development. In the dimension of the state it means that European countries are not only free democracies, but also redistributing welfare states which supplement the market with a notion of social citizenship and a second sphere of the distribution of life chances that smoothes social inequalities. In the dimension of society in the more narrow sense, it finally means, that

[2] References with a competitive edge to the United States may be found rather frequently in official EU documents (e.g. European Commission, 2004, 2005). A first, still more implicit example was contained in the conclusions of the 2000 Lisbon European Council setting the strategic goal for the Union 'to become the most dynamic knowledge-based economy in the world, capable of sustainable economic growth with more and better jobs and greater social cohesion' (European Council 2000a).

in addition to providing opportunities for the individual pursuit of happiness in a post-industrial global society, European societies promote solidarity bonds between individual citizens which strengthen social cohesion. Anthony Giddens (2005) once captured the essence of this European superiority claim in a nutshell by stating that the European social model combines economic dynamism with social justice.

Figure 1: The conception of the European Social Model as "USA plus"

ECONOMY	Dynamic market economy	+	Social dialogue and ecologically sustainable development
STATE	Democratic freedom	+	Redistributing welfare state
SOCIETY	Individual opportunity	+	Social cohesion/ security

2. How does the normative idea conform to social reality? Three empirical criteria

If the idea of a European Social Model has empirical substance, we should be able to detect three of its traces in reality: (1) European countries should be similar in having crucial elements of the model in common; (2) They should converge rather than diverge over time; (3) And they should not "Americanize" in the sense of becoming more similar to the U.S. Since I have dealt with these issues in detail elsewhere (Alber 2006, 2010), I will only examine them here briefly in a cursory fashion.

a) How much homogeneity do we find within Europe?

As we all know, the Eastern enlargement has considerably increased the socio-economic and cultural heterogeneity of the EU. GPD per capita in the richest country – Luxembourg – is now almost seven times as high as in the poorest country (Bulgaria). Even with respect to key dimensions that are central to the European Social Model we find stunning diversity:

- The social expenditure ratios ranges from 30 % in Sweden to 12 % in Latvia (factor 2.5).
- The coverage ratio of collective bargaining agreements ranges from 15 % Lithuania to over 90 % in Austria and Slovenia (factor 6).
- The relative income poverty rate ranges from 4 % in Denmark to 16 % in Slovakia (factor 4).

Perhaps even more important than the amount of considerable diversity is the fact that we also find two very different, yet similarly successful social models, i.e. the Atlantic Irish-British model with comparatively low social expenditure and weak regulation on the one hand and the Scandinavian model on the other. As I have shown elsewhere (Alber 2006), both models are similarly dynamic with respect to population growth and employment growth despite of the fact that the Scandinavian countries have similarly high public and social expenditure ratios as the much less dynamic continental European countries. Here I want to briefly illustrate this with reference to three indicators which some consider the bright side, the gray side, and the dark side of the European Social Model: the social expenditure ratio expressing welfare state extension, the public revenue share showing the burden of financing public services, and the employment rate tapping labour market success. This also leads to the second criterion of the direction of change over time.

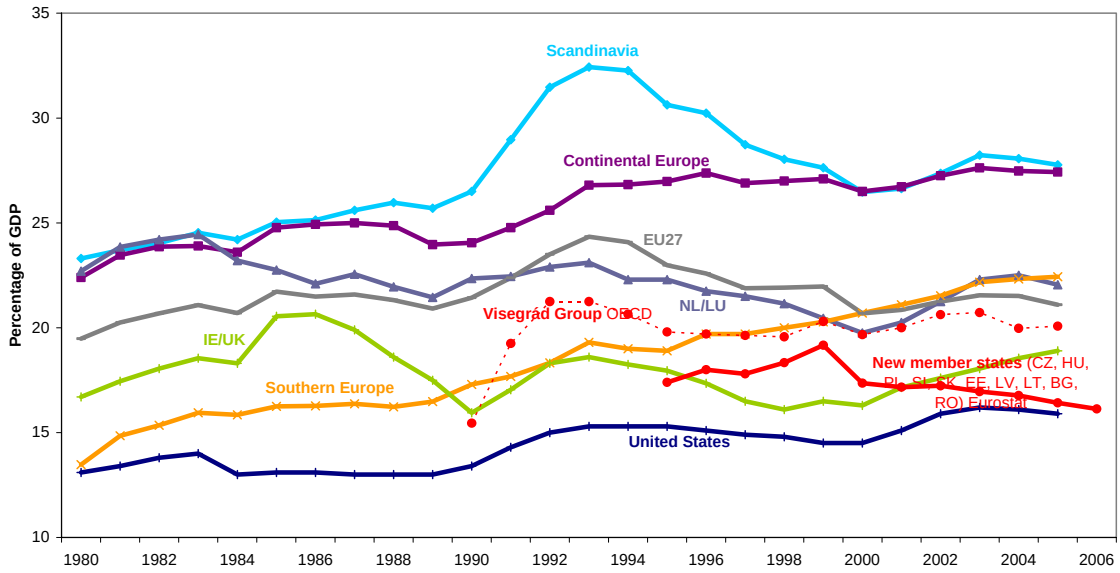
b) Is there convergence over time within Europe?

With respect to one core feature of the European Social Model – high public social spending – we see that most European countries have indeed higher spending levels than the United States, but within Europe we see persistent clusters of diverse families of nations rather than increasing similarity (figure 2):

- Scandinavian and continental European countries have similarly high social expenditure ratios.[3]
- The southern European countries witnessed a considerable catch-up process over the past decades, in other words there were no social dumping policies with a race to the bottom.
- With respect to the new member states the evidence is more mixed: There was growth compared to the early 1990s, but decline in the most recent period. Hence the new Member States come closest to approximating the United States.

[3] The sudden increase in Scandinavia in the early 1990s reflects the economic crisis following the collapse of the Soviet empire rather than an increase in social spending.

Figure 2: Gross social expenditure ratios by country groups 1980 to 2005
In percent of GDP. OECD data except for the Estern European countries (Eurostat)

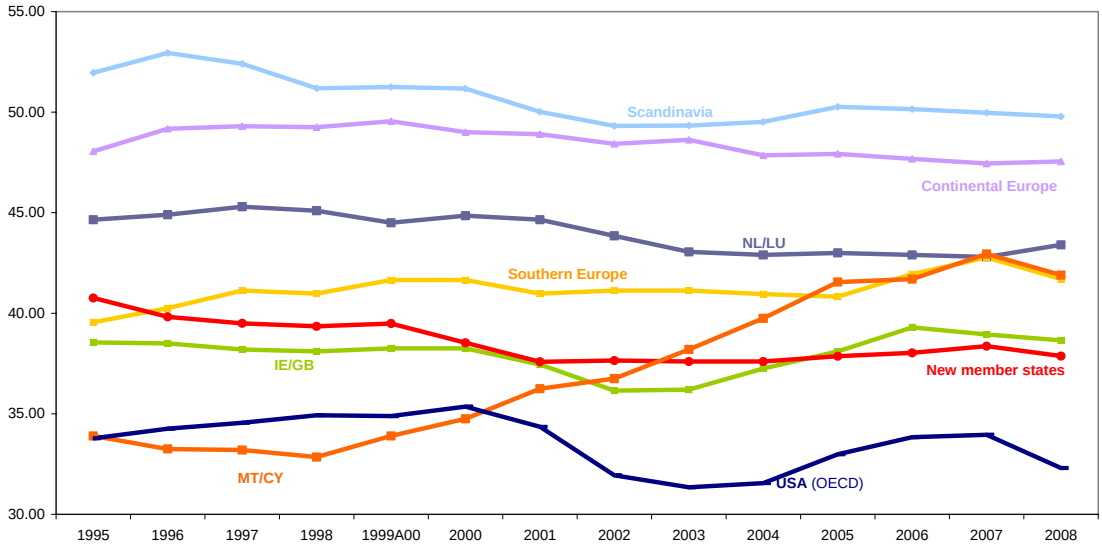


Source: OECD: Social Expenditure database, New member states: Eurostat

High public revenues are the other side of the coin in developed welfare states. Figure 3 confirms that there was no race to the bottom in recent years, but rather persistent cross-national differences. The high level of public revenues in the Scandinavian and Continental European countries is mirrored by the much lower levels in Britain and Ireland and in the Central European New Member States. While all European countries stand clearly apart from the United States, the Central European countries have joined the Anglo-Irish pattern of a comparatively low level of taxation. We neither see signs of a general race to the bottom, nor convergence towards one joint model.

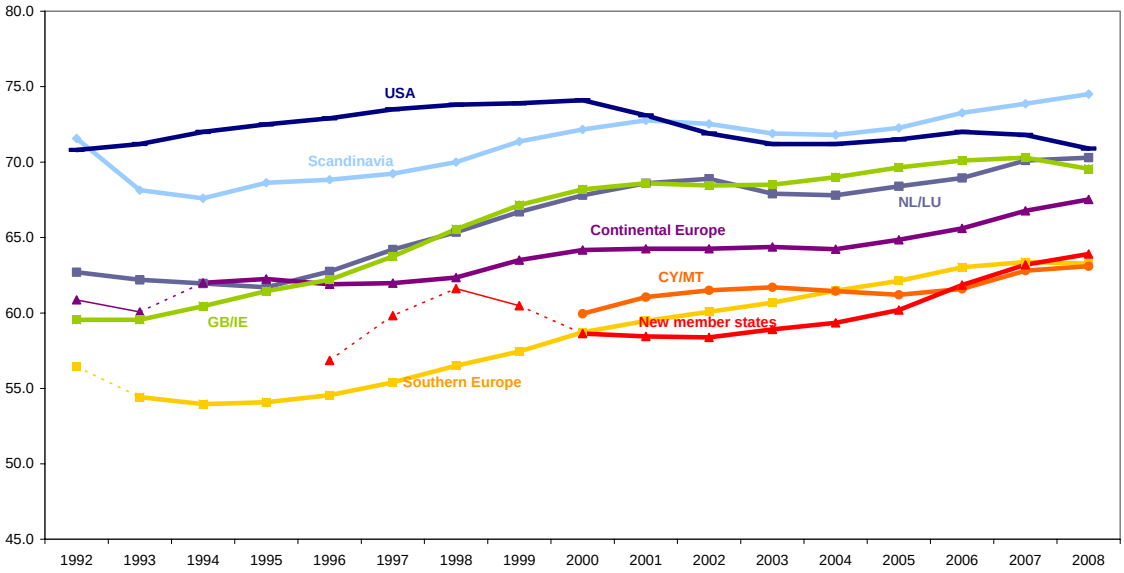
Employment used to be the dark side of the European model with higher levels of unemployment and lower levels of economic activity than in the United States (Eichhorst and Hemerijck 2009). Recent developments show, however, that Europe has been catching up with the U.S. and that there was a trend towards convergence at higher levels of employment (figure 4). In this sense, the Lisbon strategy has born fruit, even though the Scandinavian and Western European countries still lead the Continental, Southern European, and Central European countries by wide margins of more than ten percentage points. The New Member States were able to catch up with the Southern European countries.

Figure 3: Development of general government revenue 1995 - 2008
In percent of GDP



Source: Eurostat: Government revenue, expenditure and main aggregates, USA: OECD Economic Outlook 86, November 2009, Annex Table 25

Figure 4: Development of the employment rate in Europe and the USA 1992 - 2008
In percent of population aged 15-64



Source: Eurostat: Employment, data extracted on 18th March 2010

c) Does Europe approximate the U.S. or vice versa?

To the extent that the European Social Model(s) is/are viable, the U.S. should move closer up to European countries rather than European pursuing a downward trend approximating the U.S. As I have dealt with the question of an Americanization of European social policies in more detail elsewhere (Alber 2010), a few summary points may here suffice. In terms of total social expenditure the gap between the EU-15 and the U.S. has widened rather than shrunk between 1990 and 2005. With respect to private social spending, the share of private outlays increased in Europe, but as the growth was even steeper in the U.S., the gap separating the EU from the U.S. did not narrow. With respect to the policy discourse, there are some elements that might be described as Americanization in Europe – i.e. an emphasis on individual responsibility, on consumer choice, and on activation –, but also two elements of Europeanization in the U.S., as the U.S. are about to introduce a comprehensive health insurance scheme, while survey data suggest a growing acceptance of state responsibilities for redistribution over the past decades (see Alber 2010 for details). The sector-specific complexity of the changes does not suggest that any one model prevailed over the other or that overriding functional pressures pushed countries into one particular direction. If anything, path dependency – and perhaps co-convergence within families of nations – rather than convergence are the concepts which are most in line with the empirical data.[4]

In sum, European countries do deviate from the U.S. in the sense of higher social spending and a higher GDP share of public revenues, but within Europe there is much diversity with different families of nations or different welfare regimes, and there is no convincing evidence for convergence or the development of one uniform social model in Europe. The question then is what challenges the European Social Model(s) have to cope with and to what extent differences distinguishing them in the social dimension from the U.S. will be sustainable in the future. In the following, I will briefly deal with two likely types of challenges that are frequently discussed in the welfare state literature, in order to then focus in more detail on a less likely challenge which has to do with EU politics. Problems pertaining to the mode of policy making in the EU have recently become the topic of intense debates in Germany. The content of these debates might be

[4] This is very much in line with what other researchers have found. Starke, Obinger and Castles (2008) found catch-up processes rather than a race to the bottom, slightly growing revenue shares, a stability of de-commodification scores, and country-specific differences to the U.S. that increased rather than shrunk. Castles (2009) found neither convergence, nor U.S. exceptionalism, but rather impressive similarity among the English-speaking nations (i.e. the U.S., Britain, Ireland, Australia, and Canada, but not New Zealand). In his analysis, however, the U.S. stands out for its over-proportionate spending for external and internal security purposes which amounts to 14 % of social spending in Europe, but to 40 % in the U.S. Castles also found that the gap separating single OECD-countries from the U.S. has grown rather than shrunk in the three dimensions he investigates: total social spending; spending on social services; and de-commodification.

of interest to the Czech Republic, since it also witnessed an intense debate about the ratification of the Lisbon Treaty.

3. Three types of policy challenges

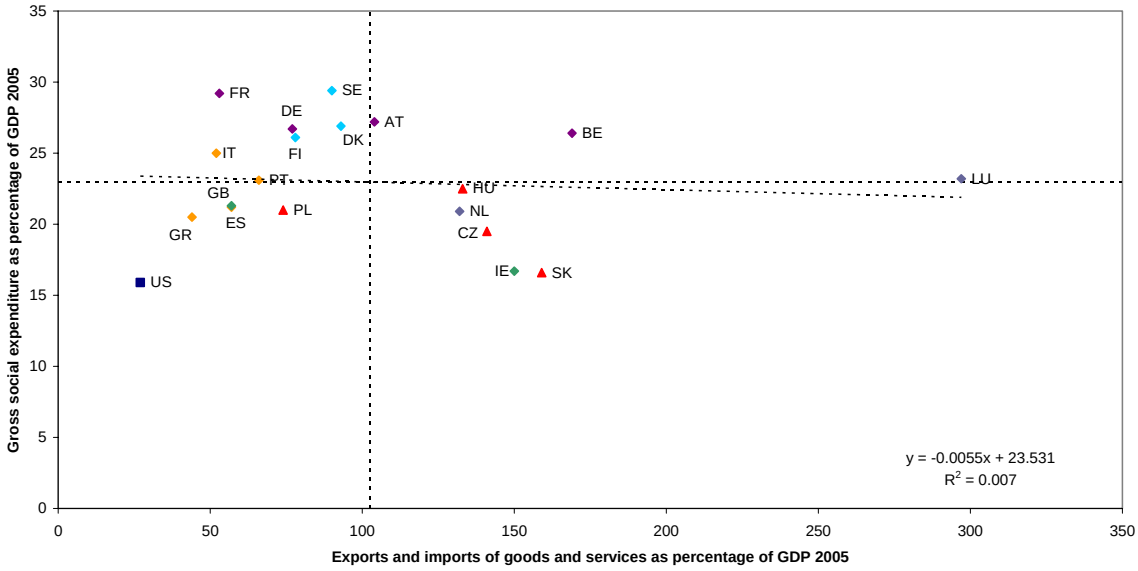
a) External challenges from globalization

A prominent argument maintains that globalization exerts a downward pressure on wages and taxes, as capital and jobs emigrate to cheap labour countries which put little regulatory or taxing demands on business (for a summary see Alber and Standing 2000; Hay 2006; for more details Geyer, Ingrebisten, Moses 2000; Scharpf and Schmidt 2000; Swank 2002). A counter-argument made by Graham Room (2002) and others contends that other factors weigh just as heavily on investment decisions as low wages or a low burden of taxation. Such factors include:

- good governance ensuring property rights,
- a well-developed infrastructure which lowers transportation costs and meets the demands of the creative class (Florida 2002),
- and a highly trained labour force which boosts productivity.

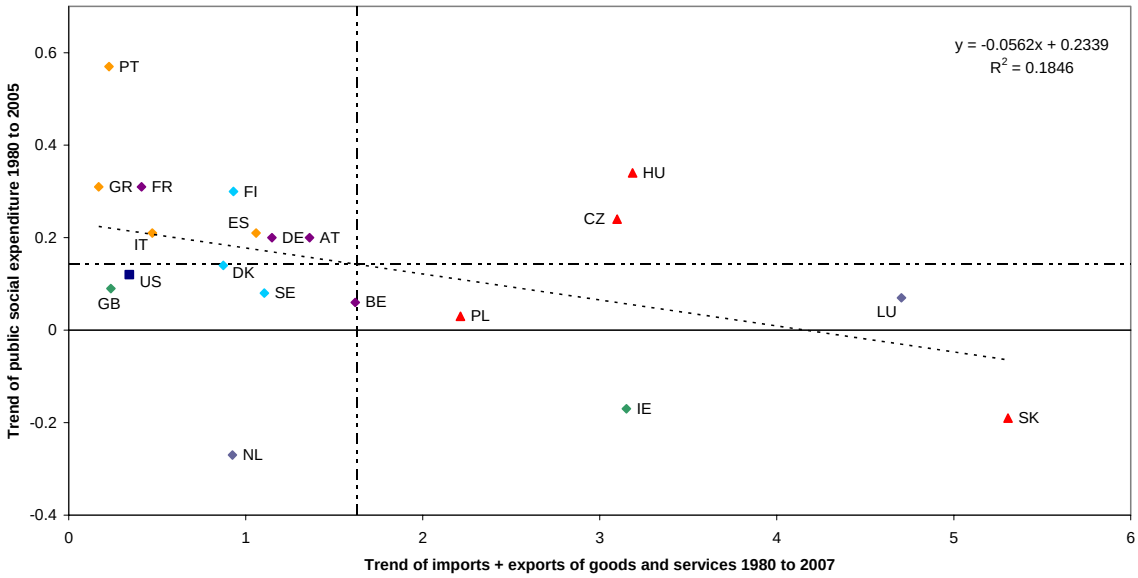
Results of empirical analyses reflect this conceptual ambiguity. We have a host of analyses with slightly discrepant findings, but there seems to be growing consensus that globalization does not create any functional imperatives, but always interacts with domestic structures which may me more or less adaptable to external pressures (Scharpf and Schmidt 2000; Swank 2002). A bivariate statistical analysis also illustrates that the relationship is not straightforward. The cross-sectional correlation between the level of world market integration as measured by the GDP share of imports and exports in 2005 is zero (figure 5). The analysis of trends since 1980 shows that countries with a higher growth of international trade involvement had lower increases of social spending, but there are only four countries in which social spending shrank (figure 6). In all other cases, a stronger integration into the international economy merely led to a less steep *growth* of social expenditure. A more serious threat than globalization pressures probably results from internal challenges confronting the European Social Model.

Figure 5: Cross sectional relationship between world market integration and social expenditure levels, 2005



Source: OECD 2007: Social Expenditure database, Worldbank 2009: World Development Indicators

Figure 6: Trends in world market integration and trends in social spending 1980 to 2005 (bs of trend line)



Source: OECD SOCX 1980-2005, World Bank 2009: World Development Indicators

b) Internal challenges within nation-states

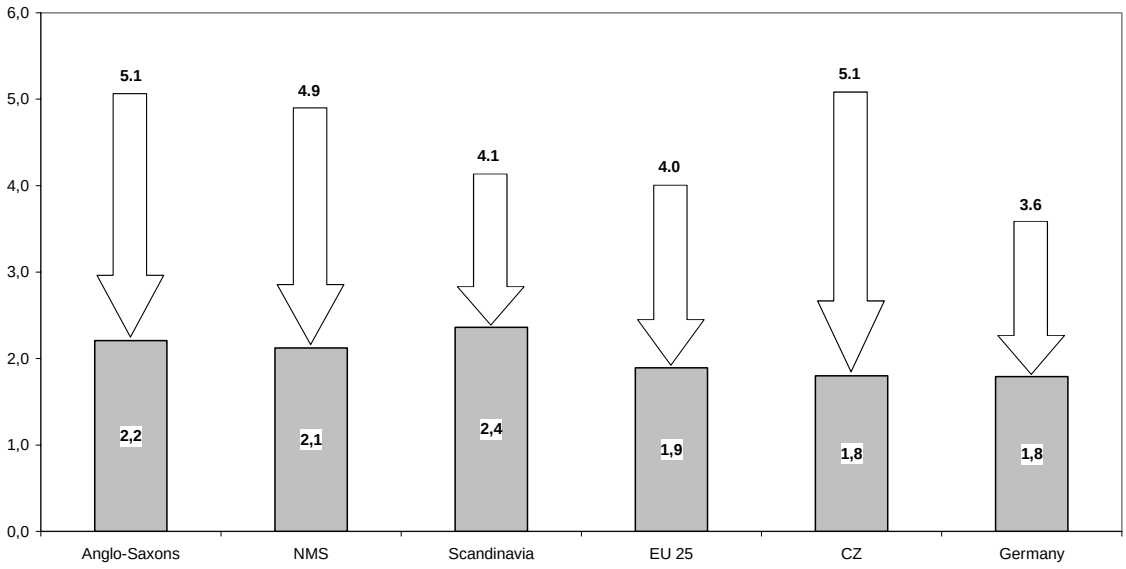
The argument that internal challenges are paramount to globalization pressure has perhaps been made most forcefully by Gösta Esping-Anderson in his books "Social Foundations of Post-Industrial Economies" (1998) and his more recent "Why we need a new welfare state" (2002). The major point is that above all two processes undermine the old post-war social order: i.e. demographic change and the transformation of the labour force from industrial to post-industrial structures with much more female employment and much less continuous career patterns.

With respect to demography two changes combine which lead to a serious threat to the sustainability of public pension schemes: the shrinking fertility rates and the greater longevity leading to growing proportions of elderly people. In combination, these processes lead to a steep growth in the old age dependency ratio which means that shrinking numbers of economically active people have to cater for growing numbers of elderly people. In the EU-25 there were about four economically active people per pensioner in 2005, but there will only be two in 2050. Together with Germany, the Czech Republic belongs to those countries where the transformation is particularly profound (figure 7).

In the labour market there were two changes with very important consequences for the pattern of labour relations in Europe: the change from industrial to post-industrial employment and the change from male to female employment. Industrial societies were male societies, the post-industrial service economy promises to become a female society. In combination with the post-communist transition in Eastern Europe these changes led to a dramatic decline of unionisation and a threat to the European pattern of industrial relations based on the idea of a social dialogue between business and labour (figure 8). In some countries unionisation is now similarly low as in the US and the coverage of collective bargaining agreements is very low, especially in Eastern Europe. This is a good illustration of a point which is sometimes made: The eastern enlargement has shifted the center of gravity to the West, as the new member states are in many respects more similar to the English speaking countries, Britain, Ireland, and the United States. We first saw this pattern with respect to the revenue ratio (figure 3), and now see it again with respect to labour relations.[5]

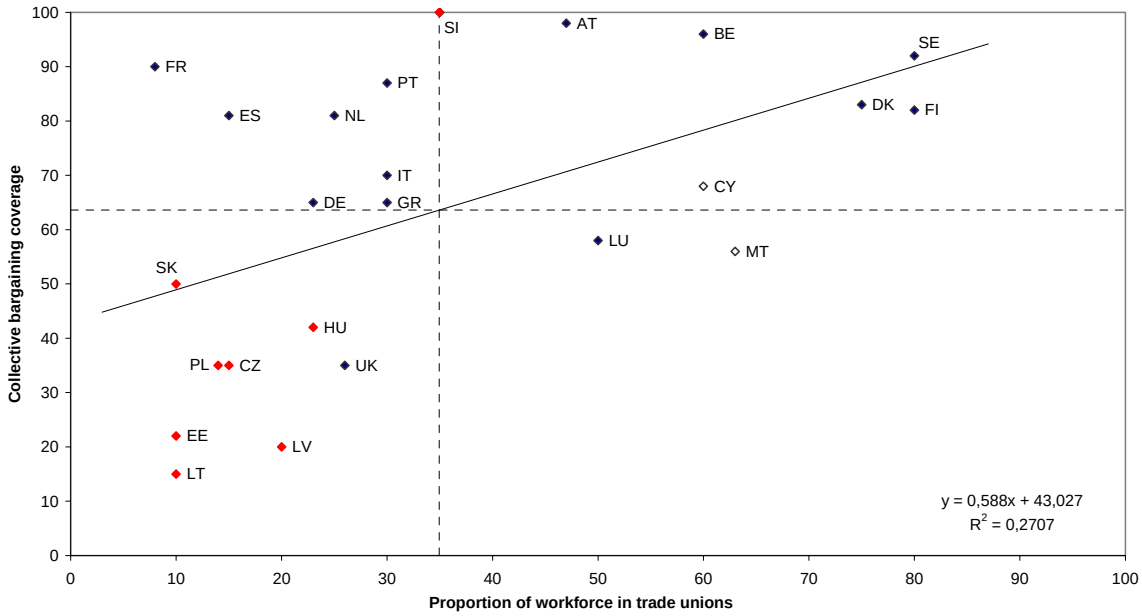
[5] These changes in the labour market have also entailed an increasing inequality of income distributions which jeopardise the goal of social cohesion in EU Member States. The OECD publication "Growing Unequal? Income distribution and poverty in OECD countries" (2008) gives a very instructive comparative overview of these developments. Compared to the mid-1980s the income distribution of most OECD countries (with only 5 exceptions: FR, GR, IR, SP, TU) was much more unequal in the mid-2000s than in the mid-1980s. Most of this increase in inequality occurred from the mid-1980s to the mid-1990s, but in several countries - including Finland, Germany, Portugal, and Sweden - the trend continued after the mid-1990s. What is new in particular is the divergence of trends in the upper and lower quintiles of the income distribution. Austria and Germany are the two European countries which belong to the group of six countries including the USA in which the real household income of the bottom quintile decreased in real terms between the mid-1990s and mid-2000s.

Figure 7: The number of economically active persons per pensioner, 2005 and 2050
(Population age 15-64 in relation to population 65+)



Source: Eurostat 2010. Population Statistics

Figure 8: Trade union density and collective bargaining coverage in Europe, 2006 (%)



Source: Eurofund 2006 (Collective bargaining coverage) and Industrial Relation Across Europe (Proportion of workforce in trade unions.)
(http://www.fedee.com/condits.html)

The internal transformation of demographic and labour market structures poses serious threats to the viability of generous welfare state schemes. However, there is a third challenge, which may sound less likely, but may be just as important. This is the challenge arising from the supranational decision making in the EU.

c) Supranational challenges on the level of the EU

On the level of the EU there are four key actors: The Council, the European Parliament, the Commission, and the European Court of Justice. The European Parliament is not only too heterogeneous, but also too weak to shape the fate of the Union to similar degrees as the other actors, because it still lacks the full right to initiate legislative acts. Depending on the policy field, the Council acts either by unanimity, or by qualified or simple majority of its component members who represent the Member States (Article 238 TFEU). In the field of social security and social protection of workers, Article 153 TFEU still prescribes that "the Council shall act unanimously, in accordance with a special legislative procedure, after consulting the European Parliament and the said Committees" (i.e the Economic and Social Committee and the Committee of the Regions). Given the great diversity of national interests, reaching unanimity is extremely difficult.[6] But even decisions by qualified majority would entail problems, because even governments who had voted against a legislative act in the Council would be compelled to enact it at home, thus facing a serious problem of legitimation vis-à-vis their national voters. In this context, the de-regulation of national provisions impeding the free movements of people or products proves to be a much easier task than the re-regulation required to harmonize diverse social policies. Whereas liberalization can be extended with little political visibility through actions of the Commission or the Court against infringements of the Treaty obligations, re-regulation depends upon the political agreement of national governments and of different parliamentary factions with very diverse interests (Scharpf 1999: 50).[7]

In Scharpf's perception, the main beneficiary of supranational European law has been de-regulation or what he calls "negative integration", because its basic rules were already contained in the primary law of the Treaties of Rome, whereas "positive integration" in the sense of re-regulating European social policy depends on the secondary law of agreements which national governments have to reach in the Council (Scharpf 1996:

[6] As Scharpf (2009c) points out, the original six Common Market countries all represented social market economies with similar Bismarck-type social security systems, whereas the later enlargements brought countries with very diverse socio-economic institutions into the club, thus rendering the task of finding consensus in social policy issues much more difficult.

[7] Scharpf (1999: 60) furthermore points out that Commission directives to abolish monopolies in telecommunication markets can be adopted by a majority of commissioners without agreement of the Council.

15). Scharpf now sees the logic of European policy making shaped by "two institutional asymmetries: the first one favoring policy making by nonpolitical actors and impeding political action at the European level, and the second favoring negative integration and impeding specific policies of positive integration." (Scharpf 2009c: 7). Policy making by political actors refers to the acts in which governments and the European Parliament have a voice. Non-political decisions are taken by the European Court of Justice (as well as by the European Central Bank) or by the Commission when it decides to prosecute certain practices of member states as violations of the Treaty. Once new legislation is adopted, it can only be abolished or adapted to changing circumstances or preferences if the Commission is willing to present a new initiative or if a blocking minority in the Council can be overcome (Scharpf 2009a: 7).[8] Hence, European legislation is much less reversible than national legislation which may be adopted, amended and revoked at any time by simple parliamentary majorities (Ibid.).

In the following, I will focus on the two major non-political actors on the European level identified by Scharpf, i.e. the Commission – which still has the monopoly of initiating legislative proposals – and the European Court of Justice which has the monopoly of interpreting European law. Obstacles in the way of positive integration could only be partly neutralized if the key actors were united in a strong will to overcome them.

With respect to the development of the European Social Model, the **Commission** has played a changing and inconsistent role over the years. If we look at our "USA plus" model, the Commission has sometimes put the emphasis on the "USA" element in the sense of stressing the growth and competitiveness as key properties that European societies should emulate, but sometimes it laid the emphasis on the "plus" element, highlighting the virtues of the European Social Model and the importance of social inclusion and cohesion.[9]

There is a structural and a phase-specific element in the Commission's wavering role. In terms of structure, different Directorates General focus on different issues. The DG for Employment**,** Social Affairs and Equal Opportunities defines poverty as relative income poverty within a national framework, whereas the DG for Regional Policy aims at EU-wide social cohesion by defining cohesion as similarity or proximity to a European standard of living conditions. These different outlooks impede the development of a coherent European social policy approach.

In addition, the Commission's agenda has changed over time and been subject to phase-specific inconsistencies regarding the emphasis on specific policies. In the early 1990s the Commission's "Green Paper on European Social Policy" (European Commis-

[8] It remains to be seen to what extent the interinstitutional agreement between the European Parliament and the Commission will effectively strengthen the role of legislative initiative requests made by Parliament.

[9] The British sociologist Ruth Levitas (1996) claims that the fight against social exclusion is merely symbolic politics which allow the neo-liberal approach of the Commission to be sold as a social project.

sion 1993a) and "White Paper on Growth, Competitiveness and Employment" (European Commission 1993b) highlighted adverse effects of European social programmes, and called for the redirection of economic and social policies in the EU that would curtail non wage-labour costs, and strengthen individual responsibility (Kuper 1994). The European Councils of Lisbon 2000 and Stockholm 2001 reiterated the importance of dynamic growth and competitiveness, of better education in a knowledge-based economy, and of activation programs which would increase labour force participation and boost the employment rate.

The European Council meetings in Laeken 2001 and Barcelona 2002 then shifted to emphasising the virtues of social inclusion, called for national action plans which would promote and monitor progress in the fields of social inclusion and social protection and developed a set of social indicators (Laeken indicators) as well as education benchmarks for the measurement of progress in education (Barcelona).

Based on the two Kok Reports of 2003 and 2004, the 2005 Review of the Lisbon Agenda then put the emphasis once again unequivocally on growth, competitiveness, and employment. The first Kok Report (Employment Taskforce 2003) was entitled *"Jobs, Jobs, Jobs"* and advocated "more investment in human capital" as the best way to social inclusion, the second one entitled "*Facing the Challenge"* (High Level Group 2004) highlighted the importance of becoming economically fit to survive in the increasingly competitive global economy.[10] The Commission's emphasis on unregulated markets reached its peak with the 2004 Bolkestein proposal for a Directive on services in the internal market. Departing from the principle of "freedom of establishment", the proposal sought to give individuals or companies residing in Member States the right to provide a wide range of services in any other Member State based on the laws of the country of origin and freed from regulations in the host country. The proposal provoked massive resistance among those fearing a downward spiral of wages and quality standards, and lead to mass protests in Belgium, France, Denmark, and Sweden. The protests culminated in the defeat of the proposed European Constitution in referenda in France and the Netherlands in 2005. After the European Parliament had considerably modified the proposal, cancelling the country of origin principle and exempting certain services – such as health and social services – from the scope of the directive, the Commission came up with a revised proposal that was passed in 2006 and went into effect in 2009.

[10] The shift of emphasis is highlighted by Graham Room (2008) who argued that the revised Lisbon agenda separated economic and social policies, tended to marginalise the latter, and gave priority to the goals of economic growth and competitiveness. It is true, however, that in some ways there was also a realization of some "plus"-elements in the "USA plus" equation: Minimum standards for the quality of work were frequently set by directives on the EU level, but not always implemented on the national level, where the New Member States are not necessarily slower in implementing EU regulations (Falkner et al. 2005). The "social dialogue" is also in some respects further developed on the EU level than in some individual Member States.

It now remains to be seen to what extent the financial crisis and the recent difficulties faced by President Barroso in getting the European's Parliament approval of his proposed Commission will reshape the agenda of the new Commission. In a deal trading the Parliament's confirmation of the new Commissioners for new institutional privileges, an interinstitutional agreement between the Commission and the Parliament strengthened the latter's role by a number of concessions, among them most notably three with implications for the social dimension of EU policies: (1) a strengthening of the right to initiate EU legislation by sending a legislative request to the Commission (Article 225 TFEU) to which the Commission now has to react within three months and must present a proposal within one year; (2) the right to be involved in legislative acts based on the social dialogue between management and labour; (3) the obligation of the Commission to complement new legislative proposals with a social impact analysis (Süddeutsche Zeitung 10. Februar 2010; European Parliament 2010).[11]

In sum, there is considerable oscillation in the policies pursued by the Commission which at times gravitate more towards the social market model, emphasizing the plus side of the "USA plus" formula, but at other times more towards the "USA" side trying to emulate America by increasing economic competitiveness.

The role of the other key actor – the **European Court of Justice** – has long been overlooked, but it has recently come under heavy attack, especially in Germany, from scholars, lawyers, and politicians alike. The importance of the Court stems from the fact that it has the sole power of giving legally binding interpretations of European law. Over the past decades the Court has issued some 7000 judgments interpreting European law in legally binding form some of which not only interpreted, but considerably developed and stretched the content of legislation (Höpner 2008, 2010). Recent German debates have drawn attention to five critical aspects of the Court's activities.

First, Court decisions have established the primacy of EU law over national law in a fashion which is not explicitly contained in the EU treaties. The relevant first steps were taken in two Court decisions of the early 1960s (Bundesverfassungsgericht 2009/ BverfG, 2 BvE 2/08, paragraph 339). In *Van Gend & Loos (C-26/62)*, the Court ruled in 1963 that "the Community constitutes a new legal order of international law for the benefit of which the states have limited their sovereign rights (...) Community law therefore not only imposes obligations on individuals but is also intended to confer upon them rights which become part of their legal heritage." One year later the Court confirmed in *Costa/ENEL (6 /641)* that "the Member States have limited their sovereign rights and have thus created a body of law which binds both their nationals and themselves." (...) "The law stemming from the Treaty, an independent source of law, could not because of its special and original nature, be overridden by domestic legal provisions, however framed, without being deprived of its character as community law and without the legal basis of the Community itself being called into question."

[11] The second aspect was reported by the newspaper, but is not contained in the summary published by the European Parliament.

Second, departing from this basis, the Court has extended the competence of EU law far beyond the principles of conferral, of subsidiarity, and of proportionality which limit the supranational competences of the EU and dominate in the Treaties (Article 5 TEU). Some key judgments pertaining to social assistance and to labour legislation may illustrate this point.

With respect to social assistance, it is clear that individual Member States can have no interest in inviting social raids (Kvist 2004) that would allow citizens from other Member States to exploit their national minimum income schemes which are financed from domestic tax payers. Hence there was general agreement that the right of residence for people without an occupational activity or for students must not become an unreasonable burden on the public finances of the host Member State (Directive 90/364). For the specific case of students, Directive 93/96 regulated that the right of residence would hinge upon a declaration that the student has sufficient resources to avoid becoming a burden on the social assistance scheme of the host country.[12]

In a number of cases the Court nevertheless ruled that citizens from other EU Member States must have the same access to social assistance as citizens of the host country, because drawing distinctions based on nationality would amount to discrimination. In the *Grzelczyk case (C-184/99)*, the Court ruled in 2001 that a French student living and studying in Belgium must have access to Belgian social assistance, as the right cannot be denied solely on the ground of nationality. It also ruled that the host Member State may reconsider the residence permit (par. 42), but may in no case deny the right simply because of the recourse to the host Member's social assistance system (par. 43). In related cases – e.g. *Trojani (C-456/02)* – the Court reiterated this position, declaring that another French citizen has access to minimum subsistence in Belgium and that the right of residence cannot be denied simply on the grounds of the social assistance receipt. The latter aspect was later explicitly incorporated into Directive 2004/38/EC.

In the field of labour relations the Court extended the reach of European Law even further beyond the legislative texts and the Treaties. Art. 153 TFEU stipulates that the Union shall merely "support and complement the activities of the Member States" in fields like "social security and social protection of workers", and it explicitly declares in paragraph 5 that "the provisions of this Article shall not apply to pay, the right of association, the right to strike or the right to impose lock-outs." However, in the opinion of the Court this exemption does not preclude that such exempted rights must be reconciled with the obligations imposed by Community law and the requirements relating to rights protected under the Treaty (Viking C-438/05, paragraphs 45-46). Hence in a number of rulings it declared collective action aiming at safeguarding national mini-

[12] Both directives were repealed in 2004 by Directive 2004/38/EC which strengthened the right of free movement within the EU, but still declared in paragraph 16: "As long as the beneficiaries of the right of residence do not become an unreasonable burden on the social assistance system of the host Member State they should not be expelled. Therefore, an expulsion measure should not be the automatic consequence of recourse to the social assistance system."

mum standards of pay as incompatible with European law. The Laval and the Viking case are two famous cases in point.

In its *Laval judgment (C-341/05)* the Court ruled that a Latvian construction firm building a public school in Sweden cannot be forced by means of collective action to enter into negotiations with the Swedish union on the rates of pay for its posted workers. The Court argued that the firm had already signed collective agreements with the Latvian building sector's trade union (paragraph 28), and that the Swedish national context is characterised "by a lack of provisions which are sufficiently precise and accessible" (Summary, paragraph 4). Hence the Court ruled that collective action by the union was illegal, because it limited the company's freedom to provide services with posted employees.

In the *Viking case (C-438/05*) a Finnish trade union threatened with strike action against the plan of a Finnish ferry company to register its vessel Rosella in Estonia and to reach a collective agreement with the Estonian union. The Finnish union demanded to either give up this plan or to uphold the terms of the Finnish collective bargaining agreement regardless of the Rosella's flag. While recognizing the right to strike as a fundamental right, the Court ruled that exercising it against the company in this case would restrict the company's freedom of establishment and would therefore violate against European law.

In the *Rüffert case (C-346/06)* the Court even went one step further by declaring a law passed by a German state parliament as incompatible with EU legislation. A state law of Lower Saxony stipulated that contractors for public works beyond a certain magnitude must pay their workers at least the wage for which the collective agreement in force at the construction site provides. A German firm that had won the tender used a Polish firm as subcontractor which paid the workers less than one half of the minimum wage set in the collective agreement. The European Court of Justice ruled that an obligation to comply with the prevailing collective agreements constitutes an impediment to market access for undertakings from other Member States and is therefore not compatible with European law.

In all these cases, the Court ruled that collective agreements which are not declared universally applicable cannot be considered to constitute a minimum rate of pay which Member States are entitled to impose on undertakings established in other Member States.[13] Moreover, the Court also declared collective agreements or strike action to be illegal, even though the Treaty on the Function of the European Union explicitly exempts the field of labour legislation with regard to pay or labour relations from the legislative competence of the EU.

The **third criticism** is that by granting non-nationals access to national social security systems, Court rulings have recurrently decoupled the scope of beneficiaries of social protection schemes from the scope of their national financiers, thus destabilizing the fiscal solvency of national systems (Scharpf 2009b). Typical examples here include not

[13] The Court here refers to Directive 96/71, see Rüffert, (C-438/5), paragraph 1 of the summary.

only the cases that opened access to national social assistance schemes cited above, but also the opening of transnational access to national public health care services or to public universities.

In the *Watts case – C-372/04 –* the Court ruled that the National Health Service of the UK must reimburse the hospital costs of a patient (Mrs. Watts) who jumped the NHS waiting list and went to Belgium to get surgery without prior authorisation of the NHS. Similar judgments with respect to health care were made in a series of other cases (e.g. *Vanbraekel C-368/98; Smits and Peerbooms C-157/99; Müller-Fauré and Van Riet; C-358/99, Inizan C-56/01, Leichtle C-8/02*).

In the case of Watts the Court ruled that

- the need for prior authorisation cannot be based merely on the existence of national waiting lists, but must be based on a medical assessment of the individual patient's needs which shows that the delay arising from such waiting lists would not be unacceptable;
- the fact that the domestic health service provides services free of charge and may have to establish a special financial mechanism to satisfy the request for reimbursement is no legitimate ground for the refusal of authorisation (paragraph 74);
- the domestic institution must pay the medical costs pursuant to the provisions of the host country;[14]
- it must hence reimburse the difference between the equivalent service in the home country and the actual medical costs incurred;
- ancillary costs associated with the cross-border movement must be paid also in case the national system covers such costs for treatments occurring in the domestic hospital system.

A similar Court ruling opened EU wide access to nationally financed universities. In *Gravier (C-293/83*) the Court ruled in 1985 that the imposition on students of other Member States of a charge, or a registration fee which is not imposed on students who are nationals of the host member state, constitutes discrimination and is hence unlawful. In *Republic of Austria (C-147/03),* the Court ruled in 2005 that Member States must take necessary measures to ensure that holders of secondary education diplomas awarded in other Member States have access to higher education under the same conditions as domestic students. This meant that Austrian universities had to cope with a massive influx of German students who had failed to pass the *numerus clausus* requirements for access to medical studies at home, but could now move freely to Austrian universities (that had decided against similar *numerus clausus* restrictions). Austria's

[14] Here the Court went beyond the *Kohll judgment (C- 158/96)* which had opened access to ambulatory services in another Member State in 1998, but had limited the payment to the rates prevailing in the country of origin of the patient.

claim that this would jeopardise national planning and the financial equilibrium of the Austrian higher education system – because the number of students likely to register would outnumber the available places by far – did not convince the Court which held that there were no precise figures to sustain the claim (paragraphs 64-65). The Court concluded that national authorities that invoke a derogation from the fundamental principle of movement for persons must "show in each individual case that their rules are necessary and proportionate to attain the aim pursued." (Summary, paragraph 3).

In all these judgments the Court clearly placed the individual right of unrestricted access to services in all Member States over national concerns regarding the capacity for planning or the fiscal solvency of schemes. Opening transnational access to social benefits that continue to be nationally financed is bound to create institutional disequilibria.[15] Such disequilibria will become prominent to the extent that the Commission succeeds in realizing its plans of moving geographical mobility in Europe closer to American levels (European Commission 2006, 2008; Commission of the European Communities 2007). While the Commission deplores "the weak mobility culture in the EU" (European Commission 2006: 6), it is the stickiness of Europeans to their home countries which presently prevents such disequilibria from becoming more pronounced and creating fiscal imbalances.

The **fourth criticism** is that by claiming the primacy of European law the Court contributes to legal uncertainty regarding the compatibility of national regulations with European law, because its rulings lack consistency. The inconsistency stems from two sources. First, judgments are usually made in separate chambers by different judges who serve for a renewable term of six years, as the Court sits in plenary session only in exceptional cases (defined in the treaties).[16] The chambers mostly consist of three or five judges, in special cases also of a Grand Chamber with 13 judges.[17] Each chamber elects its own president for a term of three years. The changing composition of the chambers is presumably a structural basis of the lack of consistency in Court decisions.

The other reason is systematic. Court decisions typically weigh the proportionality of restrictions of economic freedoms that are justified with a regard to other fundamental

[15] There are also other examples of the unbalancing of carefully calibrated national institutional configurations through EU policies. The macro-management of the economy hinges to a large extent on the successful coordination of monetary policies, fiscal policies and wage policies based on collective bargaining agreements (Scharpf 1984). If one of these elements – monetary policy - is shifted to the supranational level, while the others remain national, the task of coordination becomes much more difficult (see also Lepsius 1993b on the importance of historically grown and equilibrated institutional configurations).

[16] The 27 judges are nominated by the governments of the Member States. The national nominations are then ratified by all member states. The fact that each member state appoints only one judge means that in contrast to the Council or the Parliament, country representation on the Court is not weighed by country size.

[17] The President of the Court who is elected from and by the judges for a renewable term of three years assigns cases to the specific chambers. Since only the outcome of the vote is published as a collegial decision, external observers have no knowledge about dissenting opinions, the concrete vote of individual judges or the unanimity or non-unanimity of the decision.

rights or to an overriding national public interest against the freedoms guaranteed by the Treaty and the obligations imposed by Community law. The general pattern of the judgments is then very similar. As exemplified by the *Watts* case, the Court first declares that various aspects of common national practice such as requesting prior authorisation to medical visits abroad constitute limitations of the economic freedom to provide services. In a second step it then argues that such demands may nevertheless be legitimate in the light of certain overriding legitimate reasons such as the financial balance of domestic social security systems or the need for planning in hospital services. In a third step, it then weighs if the national restrictions are both necessary and reasonable. In a fourth and final step, it then usually – but not always – rules that the national concerns do not warrant restrictions of the economic freedoms guaranteed in the Treaties.

The *Laval and Viking* judgments on labour relations followed a similar pattern. First the Court recognised "that the right to take collective action for the protection of the workers of the host State against possible social dumping may constitute an overriding reason of public interest" (...) "which, in principle, justifies a restriction of one of the fundamental freedoms guaranteed by the Treaty" (*Laval*, paragraph 103), but then it determined that "the exercise of that right may none the less be subject to certain restrictions" (*Viking*, paragraph 44), as it "must be reconciled with the requirements relating to rights protected under the Treaty and in accordance with the principle of proportionality." (Ibid., Summary, paragraph 2).

Even though the Court judgments always make ample reference to previous cases, the specific weighing of the proportionality of opposing principles leaves a margin for discretion of which differently composed chambers make different use. Hence there are also judgments in which the Court recognised the legitimacy of national restrictions. In issues pertaining to labour relations, the Court typically accepts the binding character of domestic wage levels that are based on universally applicable minimum wage legislation. The judgment in the *Mazzoleni case – C-165/98* – is a good case in point. The Court ruled "that Community law does not preclude a Member State from requiring an undertaking established in another Member State which provides services in the territory of the first State to pay its workers the minimum remuneration fixed by the national rules of that State." (Paragraph 29 and Summary) Hence the Court left it "for the competent authorities of the host Member State to establish whether, and if so to what extent, application of national rules imposing a minimum wage on such an undertaking is necessary and proportionate in order to ensure the protection of the workers concerned." (Paragraph 41)[18] In the joined cases *Arblade (C-369/96) and Leloup (C-376/96)*, the

[18] In the joined cases *Finalarte and others (C-49/98, C-50/98, C-52/98 to C-54/98 and C-68/98 to C-71/98)*, the Court similarly ruled that the relevant Treaty articles "do not preclude a Member State from imposing national rules guaranteeing entitlement to paid leave for posted workers on a business in the construction industry established in another Member State (…) on the two-fold condition that: (i) the workers do not enjoy an essentially similar level of protection under the law of the Member State where their employer is established (…) and (ii) the application of those rules by the first Member State is proportionate to the public interest objective pursued." (Summary, paragraph 1).

Court furthermore specified that the relevant Treaty articles "do not preclude a Member State from requiring an undertaking established in another Member State (…) to pay the workers deployed by it the minimum remuneration fixed by the collective labour agreement applicable in the first Member State, provided that the provisions in questions are sufficiently precise and accessible (...)" (Summary, paragraph 1).[19]

In the *Schmidberger case (C-112/00)* the court had to decide if a demonstration blocking the Brenner highway in order to protest against excessive pollution should be considered a restriction of the free trade of goods among Member States. It ruled that the Austrian authorities were entitled to permit the demonstration, because even the complete closure of a major transit route between Member States may be compatible with EU law provided that that restriction "is justified by the legitimate interest in the protection of fundamental rights, in this case the protesters' freedom of expression and freedom of assembly, which applies both to the Community and the Member States." (Summary, paragraph 2)

With respect to the access of Union citizens to social benefits in other Member States, the Court has recurrently accepted national requirements that make the entitlement conditional upon a certain length of stay or a certain level of integration into the host country. In the *Collins case (C-138/02)*, the Court ruled against the claim of an Irish citizen residing in the United Kingdom that the Treaty does not preclude national legislation which makes entitlement to a jobseeker's allowance conditional on a residence requirement based on considerations "that are independent of the nationality of the persons concerned and proportionate to the legitimate aim of the national provisions." (Summary, paragraph 3). In the *Bidar case (C-209/03)* relating to a French student claiming student support in the UK, the Court similarly ruled that "in the case of assistance covering the maintenance costs of students, it is thus legitimate for a Member State to grant such assistance only to students who have demonstrated a certain degree of integration into the society of that State." (paragraph 57) It specified, however, that "the existence of a certain degree of integration may be regarded as established by finding that the student in question has resided in the host Member State for a certain length of time." (Paragraph 59) In the *Förster case (C-158/07*) relating to a German student claiming support in the Netherlands, the Court specified that it is legitimate for a Member State to make eligibility conditional upon five years' continuous residence in the host country (paragraph 54).[20]

[19] It precluded, however, that such an employer be required – "even by way of public-order legislation" - to pay employer's contributions to the host country's social security system if it pays such contributions already in its home country, and to demand labour documents for each worker if such documents are already kept in the home country (Summary, paragraphs 2 and 3).

[20] The *Sodemare case (C-70/95)* is another example of a ruling upholding the legitimacy of national provision. Here the Court ruled in 1997 that a Member State (in this case Italy) may make the admission of private providers of social welfare services subject to the condition that they are non-profit-making (and may hence deny access to a provider from Luxembourg).

In sum, then, the Court does not always rule in favour of individual entitlements over national concerns. Much depends upon the specifics of the case and apparently also on the way in which national actions or regulations were specifically framed. As long as legislative acts or administrative actions make no difference between national citizens and Union citizens from other Member States, the risk that the Court will strike them down is smaller than in cases which are easily defined as discriminating between nationals and other EU-citizens. One of the consequences of this is that collective actors such as trade unions planning a strike cannot afford any longer to do without the advice of lawyers who are experts in European law.

The **fifth criticism**, finally, is that despite all inconsistency, the Court's rulings do not affect all national institutions similarly in a neutral fashion, but are biased against peculiar national arrangements such as collective bargaining agreements or collectively financed public services providing benefits in kind for free (Höpner und Schäfer 2008a, 2008b; Höpner 2008; Höpner 2010; Scharpf 2009b, 2009c). In this sense, the Court involuntarily exerts pressure on national governments to shift to institutions which are better compatible with European law. In the field of labour relations, for example, minimum wage legislation clearly has better chances to be respected by the Court than minimum rates based on collective agreements which dominate in Scandinavia and Germany. In the field of public health services, reimbursement schemes are better suited to cope with Court judgments granting all citizens access to services in other Member States than a public health service granting benefits free of charge at the point of delivery such as the British NHS. Similarly, education systems that want to provide higher education as a public service free of charge are less compatible with the free movement of students than systems that demand tuition fees. The Court rulings thus imply pressures for convergence even in policy fields where current EU law only provides for the soft and flexible open method of coordination.

As most of the Court's judgments are in favour of de-regulation, the Court's role frequently amounts to initiating what Maurizio Ferrera once called "the gloomy spiral" of "national de-structuring without supra-national restructuring" (Ferrera 2005a: 252; see also Höpner and Schäfer 2008b). The question then is what chances there are to stop and possibly reverse this process of de-structuring. Basically, there are two possibilities: Either the EU attains more social competences at the supranational level, or individual nation-states regain some of their rights. In the final section, I will discuss the prospects for either solution.

4. Future prospects

a) The impact of the present financial crisis

The financial crisis has thoroughly weakened the position of those who advocate de-regulation as the most promising path to future growth and prosperity. Hence, defenders of the idea of a European Social Model are less on the defensive now than they were over the past two decades, and under the scrutiny of the European Parliament the new Commission may prove less favourable to de-regulation than its predecessors. This does not mean, however, that the prospects for a supranational restructuring of the welfare state have brightened. Policy learning and soft regulation through the open method of coordination will probably continue, but the prospects for a hard and binding European social legislation have not really improved. There a three rather tight limits to hard law harmonizing European social policies in a way that could strengthen the "plus" side in the interpretation of the European social model as a "USA plus".

b) The triple limits to effective supranational social policies in the EU

The first limit relates to the heterogeneity of national interests and to the dilemma of EU decision making. Redistribution requires legitimation. But on the European level, the Eastern enlargement has even increased the heterogeneity of national interests so that consensual decisions are very hard to reach. National laws seeking to guarantee minimum wages or high level of social benefits for all workers also have the effect of blocking workers from low wage countries who are in search of a job and would be willing to work for less pay that is still more than they would earn at home. Hence regulations that would be equally satisfying to both sides are hard to find. Majority decisions, on the other hand, would lack legitimation, because they would even be binding for those national governments which had voted against the initiative in the Council and in so doing had relied upon the support of their national voters. This dilemma makes a supranational restructuring of social policies on the European level unlikely and leads to the priority of negative over positive integration as analyzed by Fritz Scharpf (1996; 1999; 2009b, 2009c).

The second limit has to do with the lack of fiscal resources. Compared to national states which have public expenditure ratios in the range of one third to one half of GDP,

the EU has only a tiny budget that is limited to 1.24 % of GDP.[21] As the financial crisis has considerably tightened the fiscal squeeze, it seems very unlikely that national governments might be willing to grant more revenues to the EU.

The third limit has to do with the unwillingness of EU citizens to extend their notions of solidarity beyond national boundaries. It is true that European citizens by now have European or trans-national standards of comparison when judging their own living conditions. This is indicated by the fact that even those in the highest income quartiles of poorer European countries have lower life satisfaction scores than those in the lowest income quartile of rich Member States (figure 9). However, Europeans continue to have national mind-sets in a triple sense: Their collective identity continues to be framed in national, not supranational terms, their concept of solidarity ends at the borders of the nation-state, and they want to allocate decision-making on social policy issues on the national rather than on the European level.

In 2004, Eurobarometer 62 asked Europeans about their perceived collective identity and about their perception of the EU. For the survey question "In the near future do you see yourself as …", the results were as follows:

- Nationality (e.g. Italian) only: around 40 %
- Nationality and European: around 45 %
- European and Nationality: below 10 %
- European only: around 3 %

The percentage of Europeans considering the EU membership "a good thing" decreased by almost 20 percentage points from 72 % in the Eurobarometers of the early 1990s to 53 % in autumn 2006**.** In Eurobarometer 66 of autumn 2006, the percentage of respondents opposing further enlargements was practically as high as the percentage of proponents (42 % as compared to 46 %).[22]

The extent to which Europeans continue to have national concepts of solidarity can be measured on the basis of a question in the European Values Survey 1999/2000 which asked: "When jobs are scarce employers should give priority to people in (home country)." The result was sobering for those who deride the concept of nation-states as representing an obsolete "container model" of European societies

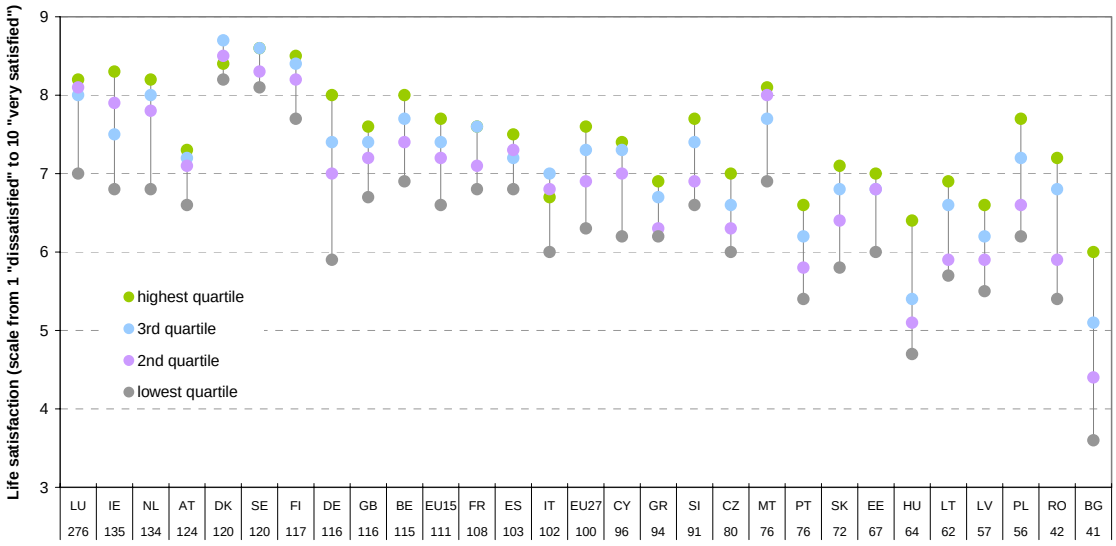
- There are only 4 European Member States where more than half of the respondents disagree with this statement (SW, DK, NL, LU)
- In 10 of the EU-15 countries there is a two thirds majority in favour of discrimination

[21] In absolute terms, the EU budget is less than one half the size of the German central government budget which in turn claims only about 30 % of the total outlays of public authorities in Germany (EU budget 2007: 126.5 bio – German federal government 303.175 bio. - Statistisches Jahrbuch für die Bundesrepublik Deutschland 2008: 570).

[22] This is based on analyses of Standard Eurobarometer 56 (Autumn 2001), Standard Eurobarometer 62 (Autumn 2004), and Standard Eurobarometer 66 (Autumn 2006) carried out by Florian Fliegner.

- In 10 of the New Member States there are even larger majorities in favour of discrimination, as less than 20 % reject the statement. In the Czech Republic this minority counted only 11 %, and Estonia is the only exception with a rejection rate of 48 % (based on Gerhards and Hölscher 2005; Gerhards 2007).

Figure 9: Life Satisfaction by income quartiles in European countries, 2009
Countries ranked by GDP per capita (EU27 = 100)



Source: European Quality of Life Survey II 2007. Eurostat Database 2010 (GDP per capita)

Finally, Europeans continue to have a strong preference for national decision making on social policy issues. The European Social Survey 2002 asked: "Policies can be decided at different levels. Using this card, at which level do you think the following policies should mainly be decided?" For "social welfare" the answers were distributed as follows:

- National level: This is the preferred solution of Europeans for which almost two thirds – 61 % – opt. The national range is from 45 % in Italy to 76 % in the Czech Republic.
- European Level: This ranks second, preferred, however, only by a small minority of 15 %; the national range is from 7 % in Poland to 24 % in Spain and Germany.
- Regional or local level: This is preferred by 14 % of Europeans, with a range from 5 % in Germany to 35 % in Poland.

- International level: This is only preferred by a small minority of 10 %, with a range from 3 % in Ireland to 20 % in Spain.[23]

The fact is, then, that the European elites lack consensus and that European citizens shy away from empowering the EU in social policies. The question then remains what can realistically be done in order to avoid the "gloomy spiral" of de-structuring without re-structuring. In the concluding section I want to look at three proposals, the third of which is currently debated intensively in Germany and may be particularly interesting from a Czech perspective given the recent ratification debate.

c) Three realistic reform proposals

The first proposal relates to the level of the EU and is a fairly modest and conventional one. It has been made by Tony Blair during the British Presidency and it is frequently re-iterated by policy consultants such as Gøsta Esping-Andersen, Maurizio Ferrera, Anthony Giddens, or Anton Hemerijck, so that progress is already well under way and now partly enshrined in the Commission's new agenda for Europe 2020[24]: Shift the EU budget emphasis from support for declining sectors of the past to the knowledge economy of the future; invest more in human resources with a focus on children.[25] There is also a more specific and perhaps even more important element, however, which concerns second generation immigrants. One of the great failures of European societies is the comparatively weak integration of immigrant children into the educational system and into national labour markets. In economic terms Europe thus wastes and neglects a huge amount of human capital, in sociological terms Europe runs the risk of producing an underclass with severely hampered chances of integration into labour markets and into the host culture. This is one of the fields in which the U.S. does better than many European countries including the biggest European nation in terms of population size,

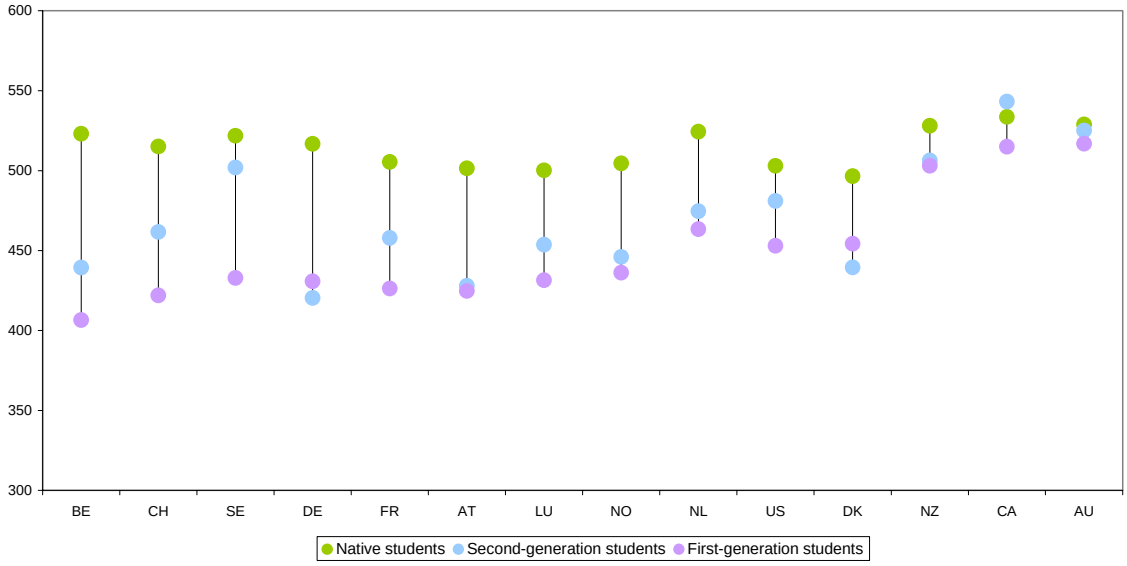
[23] I owe these data to a courtesy of Richard Rose who analysed question B35-42 in the European Social Survey 2002 and shared the results with me.

[24] The major goals of Europe 2020 are: (1) Raise the employment rate of the population aged 20-64 from the current 69 % to at least 75 % ; (2) achieve the target of investing 3 % of GDP in R&D in particular by improving the conditions for R&D investment by the private sector, and develop a new indicator to track innovation; (3) reduce greenhouse gas emissions by at least 20 % compared to 1990 levels or by 30 % if the conditions are right, increase the share of renewable energy in our final energy consumption to 20 % , and achieve a 20 % increase in energy efficiency; (4) reduce the share of early school leavers to 10 % from the current 15 % and increase the share of the population aged 30-34 having completed tertiary education from 31 % to at least 40 % ; (5) reduce the number of Europeans living below national poverty lines by 25 % , lifting 20 million people out of poverty (European Commission 2010).

[25] Ferrera (2005b: 19) was one of the first to pointed out the absence of children in any of the objectives that guide the open coordination process.

Germany, where the situation is particularly dismal, as the second generation of immigrants fares even worse than the first one (figure 10).

Figure 10: Mean scores in reading performance of 15-year old students by immigrant status OECD countries, 2003*



Source: based on OECD PISA-Study 2003 online database.
*Order by difference native minus first generation students

A second proposal also relates to the European level and refers to the improvement of legislation and of soft law by further developing and extending the range of social monitoring processes. This has just been proposed by the European Parliament in its inter-organizational accord found with the Commission in the course of the quarrels over the election of the new Barroso Commission. Already now, the open method of coordination relies on the setting of certain social benchmarks and on comparing to what extent the member countries meet them or at least approximate meeting them. Thus we now have the 18 Laeken indicators tapping the degree of income poverty, of income inequality, of unemployment and of ill health, and of insufficient schooling or educational poverty. For employment we have the targets of the Lisbon and Stockholm Councils, for education we have the five benchmarks setting the goals to be achieved by 2010, and now also the new goals defined in the agenda for Europe 2020.[26]

[26] Two promising further attempts towards a monitoring of progress in the social dimension already exist: The European Quality of Life Survey of the European Foundation for the Improvement of Living and Working Conditions in Dublin (2003 and 2007 – for analyses see Alber/Fahey/Saraceno 2008), and the monitoring of good governance in the Quality of Government Institute at Gothenborg University in Sweden which received last year's award of the American Political Science Association for the best comparative data set in political science.

As now proposed by the European Parliament and agreed upon by the Commission, these reviews of specific policies should be developed to a much broader monitoring of the likely social impact of EU legislation and of the progress the EU makes in terms of fulfilling its goals. Social monitoring attempts assessing the social consequences of European law might be developed not only by national governments or parliaments, but also on the associational level by the social partners (Jobelius 2007). I think such attempts should include a *European statistical minimum*, set for example at 40 % of the European median, and used only for purposes of social reporting, similar to the American federal poverty standard.[27] Such a unified statistical poverty measure would be preferable to the at risk of poverty rate which is used by Eurostat and set at 60 % of the *national* median equivalent income, because this seemingly identical poverty threshold is actually set at a level which is roughly seven times higher in Luxembourg than in poorer new Member States. Such a measure could also reconcile regional and social policy procedures in the EU (Fahey 2007). In a similar, but more binding form going beyond mere statistical information, Fritz Scharpf (Scharpf 2009d: 8) has advocated a national commitment to wages that do not fall below a joint *relative* poverty level which would be set at the same relative level, but be calculated with reference to the national mean or median. In essence the result of such social monitoring processes would be a higher awareness of the social consequences of EU legislation and a naming and shaming process, where the enhanced visibility of national shortcomings might contribute to weakening social dumping tendencies and to enhancing positive catch-up pressures that are rooted in the need to gain the democratic consent of voters who increasingly develop European standards of comparison.

A third proposal implies a stronger departure from past EU practice, as it advocates re-strengthening the role of national parliaments and governments. The new approach is already enshrined in the new Lisbon Treaty – where Article 5 TEU stresses limits of EU legislative powers, while Protocols 1 and 2 outline the stronger involvement of national parliaments in EU law making, and define the application of the principles of subsidiarity and proportionality (see below). Limits of EU competences are even stressed further in the 2009 ruling of the German Constitutional Court on the compatibility of the ratification of the Lisbon Treaty with the German constitution.[28]

In its 2009 judgment, the German Constitutional Court (*Bundesverfassungsgericht*) declared the ratification of the Lisbon Treaty to be compatible with the German constitution, but it made several reservations which must be considered binding for Germany and which all amount to strengthening the role of national parliaments in EU law mak-

[27] This standard is merely used for statistical purposes in the U.S. and has nothing to do with the much lower benefit rates under the social assistance scheme (Temporary Assistance for Needy Families – see Alber 2010).

[28] For a contrasting view see Wickham (2002) who is concerned about the future of the European Social Model, when he characterizes EU policies as follows: “Instead of an ‘ever closer union of peoples’ we are offered merely an ‘ever greater market’”, but adds that “in this situation the last thing we need is ‘subsidiarity’.”

ing. The German court considers the European Union a union of states which does not yet represent a united people of European citizens, but only the various peoples of European countries, constituted as citizens of separate nation states (Bundesverfassungsgericht 2009/BVerfG, 2 BvE 2/08 paragraphs 286, 346). In contrast to Article 10 TEU which states somewhat ambiguously that "Citizens are directly represented at Union level in the European Parliament", other Treaty Articles clearly point to the derived nature of Union citizenship which follows especially from two facts: (1) Single states have the right to leave the EU, and to take their citizens with them (Article 50 TEU). (2) Based on the principle of "degressive proportionality", representation is made contingent upon the nation-specific population size so that individual Member States are represented by a minimum of six, but a maximum of 96 members (Article 14 TEU).[29]

Second, in the opinion of the German Court, EU decision-making procedures do not meet fully the criteria of democratic accountability and of equal representation according to the principle one man one vote (paragraphs 293-296).

Third, the German Court finds an inherent tension between two opposing principles in EU law. The *economic concept* of a single market based on the four economic freedoms with the principle of non-discrimination according to nationality does not allow making any differences between the single Member States from which persons, goods or services originate. In contrast, the *political concept* of representation takes differences in the country of origin explicitly into account by making political representation degressively proportional, with minimum and maximum thresholds for the representation of single nation states (paragraph 287).

Fourth, the German Court recurrently stresses the limited character of EU legislative competences which are confined to specific fields for which the Treaties explicitly bestow rights under the so-called principles of conferral, of subsidiarity, and of proportionality. Following these principles outlined in Article 5 TEU, the Union shall act only within the limits of the competences conferred upon it by the Member States to attain the objectives set out in the Treaties, and in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States.

The German Court draws two major conclusions from its analysis. First it concludes that the peoples of the single Member States remain the sole embodiment of the principles of democratic sovereignty and of political legitimation (paragraph 347). Second it concludes that it is up to the national Parliament – and in the last instance to the national

[29] These limits imply that the number of citizens represented by a member of the European Parliament is very different in the single Member States, being much higher in larger states. Since Germany and France have the same number of 96 representatives in parliament, each of their representatives may be said to represent about 857.000 EU citizens, whereas a Maltese representative stands for 67.000, and a MP from Luxembourg for 83.000 EU citizens (paragraphs 285-287). If proportional representation were calculated with reference to the national number of citizens in each country the distortions would be even bigger. In the European Council the votes of individual countries continue to be weighed by country size – varying from 3 in Malta to 29 in the four biggest Member States -, until the Treaty of Nice regulations expire in 2017.

Constitutional Court – to decide if and to what extent European law becomes the law of the land. Hence it ordered the national parliament to play a more active role in future European law making and to formally declare its explicit consent with new European regulations and directives (paragraph 416).[30] The Court furthermore declared that it will make its own scrutiny of European law subject upon two basic criteria: a) the *ultra vires* control checking if European law making stays within the bounds of the principle of conferral[31], b) the *identity* control checking if the national adoption of European law would leave the substantive identity of the German constitution unaltered (paragraphs 238, 240). In the event that such controls should result in a negative verdict, the Court explicitly leaves no doubt that it would consider European law to be inapplicable in Germany (paragraph 241), and in this sense it does not accept the doctrine of the primacy of European law enshrined in the judgements of the European Court of Justice.[32] In essence the Court thus calls for a Europeanization of national parliaments in similar ways as propagated earlier by sociologists and political scientists such as Rainer Lepsius (1993b), Max Haller (2008) or Fritz Scharpf (2009b, 2009c). Especially Lepsius was early in propagating the view that an Europeanisation of national Parliaments would lead more effectively to a democratisation of EU politics than a denationalisation of the European Parliament (Lepsius 1993b: 285).

After the failure of the European Constitutional Treaty in the referenda in France and the Netherlands (and later in Ireland), the Commission also adopted the view that there may be a democratic deficit in EU policy making which should be counteracted by strengthening the role of national actors (Commission of the European Communities 2005). The Lisbon Treaty added the Protocol on the Application of the Principles of Subsidiarity and Proportionality which now forms part of the Treaty and empowers national parliaments not only to be informed about Commission initiatives, but to send a reasoned opinion on whether a draft legislative act complies with the principle of subsidiarity. If at least one third of the votes allocated to national parliaments regard a draft legislative as non-complying with this principle, the draft must be reviewed. National parliaments now also have the right to sue at the Court of Justice on grounds of infringement of the principle of subsidiarity by a legislative act.

Strengthening the role of national parliaments in EU law making may lead to more effective controls of the Commission in the decision making process, but it can do little to restrain the active role which the European Court of Justice is playing in interpreting

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30 Other countries such as Denmark or Sweden have strengthened the role of their national parliaments in European decision making already much earlier.

31 The German version of the Treaty calls this the principle "*der begrenzten Einzelermächtigung*". This sounds considerably more restrictive than the English "principle of conferral", as it limits the concept twice: by adding the adjective "limited" (*begrenzt*) and by adding a restricting prefix to the noun, i.e. "*specific* conferral" (*Einzel*ermächtigung). This reminds us that European law does not sound exactly identical in all the different languages of the Union.

32 In my perception, the German Courts' statements on the primacy of national sovereignty in paragraphs 238 and 241 are very much in tension with the declarations of the primacy of European law in the rulings Van Gend & Loos (C-26/62) and Costa-ENEL (C-6/64) of the European Court of Justice.

the laws *after* they have been passed. Several German lawyers and political scientists have concluded that the Court has overstretched its role and has surpassed acceptable limits of intervention into national institutional arrangements.[33] Furthermore, as shown above, its judicial legislation amounted predominantly to strengthen liberalizing and deregulatory policies that protect the Treaty based economic freedoms and weaken nationally financed social programmes by opening them to transnational access.[34]

To cope with the asymmetry between political and non-political law making, several German authors recommend a strategy of politically enforced self-restraint of the European Court of Justice, especially in matters which are excluded from the jurisdiction of EU legislation under the Treaty (Höpner 2008; Scharpf 2009a; 2009c). Scharpf advocates that national governments should openly declare their non-compliance with specific judgments which they consider beyond the EU competences (*ultra vires*) and should then couple their refusal with the promise to obey a majority vote in the European Council sustaining the Court's ruling. According to Scharpf this would transform a non-political court decision into a politically deliberate choice (Scharpf 2009a). Scharpf concludes that as good Europeans we should stop taking automatic compliance with any type of European rule as our criterion of goodness, but should become critical of the anti-democratic effects of "integration through non-political judicial legislation". The German debate thus illustrates that resistance against processes of Europeanization need not be based on nationalistic concerns about the fading authority of national governments or nation-states, but may reflect a social democratic concern about the impact of citizens as voters, the future of the European Social Model, and the viability of social policies that continue to be financed on the national level.

[33] In 2008 Roman Herzog, the former President of the German Constitutional Court, published an article entitled "Stop the European Court of Justice" in one of the leading German newspapers which aroused widespread attention (Herzog and Gerken 2008).

[34] For a more positive assessment of the role of the Court with respect to social rights see Caporaso and Tarrow (2009).

References

Alber, Jens (2006) 'The European Social Model and the USA', *European Union Politics*, 7, 3: 393-419.

Alber, Jens (2010) 'What the European and American welfare states have in common and where they differ - Facts and fiction in comparisons of the European Social Model and the United States', *Journal of European Social Policy*, 20, 2: 1-24.

Alber, Jens, and Standing, Guy (2000) 'Social dumping, catch-up, or convergence? Europe in a comparative global context', *Journal of European Social Policy*, 10, 2: 99-119.

Alber, Jens, Fahey, Tony, and Saraceno, Chiara (eds.) (2008) *Handbook of Quality of Life in the Enlarged European Union*, London/New York: Routlege.

Albert, Michel (1992) *Kapitalismus contra Kapitalismus*. Frankfurt a. M.: Campus.

Bundesverfassungsgericht (2009) ‚Leitsätze zum Urteil des Zweiten Senats vom 30. Juni 2009' (BVerfG, 2 BvE 2/08). Online available: http://www.bverfg.de/entscheidungen/es20090630_2bve000208.html (accessed March 2010).

Caporaso, James, and Tarrow, Sidney (2009) 'Polanyi in Brussels: Supranational Institutions and the Transnational Embedding of Markets', *International Organization*, 63: 593-620 . Online available: http://journals.cambridge.org/action/displayFulltext?type=1&fid=6377880&jid=&volumeId=&issueId=04&aid=6377872&bodyId=&membershipNumber=&societyETOCSession= (accessed March 2010).

Castles, Francis G. (2009) 'Patterns of State Expenditure in Europe and America', in: Jens Alber and Neil Gilbert (eds.) *United in Diversity? Comparing Social Models in Europe and America,.* Oxford, New York: Oxford University Press, pp. 109-132.

Commission of the European Communities (2005) *The Commission's Contribution to the Period of Reflection and Beyond: Plan-D for Democracy, Dialogue and Debate. Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions*, Brussels, Com (2005) 494 final.

Commission of the European Communities (2007) *Communication from the Commission to the Council, the European Parliament, The European Economic and Social Committee and the Committee of the Regions. Mobility, an instrument for more and better jobs: The European Job Mobility Action Plan (2007-2010)*, Brussels, 6.12.2007, COM(2007) 773 final. Online available: http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0773:FIN:EN:PDF (accessed March 2010).

Eichhorst, Werner, and Hemerijck, Anton (2009) 'Welfare and employment: A European Dilemma?', in Jens Alber and Neil Gilbert (eds.), *United in Diversity? Comparing Social Models in Europe and America*, Oxford, New York: Oxford University Press, pp. 201-236.

Employment Taskforce (chaired by Wim Kok) (2003) *Jobs, Jobs, Jobs. Creating more employment in Europe*. Online available: http://www.mol.fi/mol/en/99_pdf/en/90_publications/employment_taskforce_report2003.pdf (accessed March 2010).

Esping-Andersen, Gosta (1998) *Social Foundations of Post-Industrial Economies,* Oxford: Oxford University Press.

Esping-Andersen, Gosta, Gallie, Duncan, Hemerijck, Anton, and Myles, John (2002) *Why we need a new welfare state*, Oxford: Oxford University Press.

European Commission (1993a) *Green Paper: European Social Policy - Options for the Union*, COM(93) 551, November 1993.

European Commission (1993b) *Growth, competitiveness, and employment. The challenges and ways forward into the 21st century*, COM (93) 700 final, Brussels: 05.12.1993.

European Commission (ed.) (2004) *Employment in Europe: Recent Trends and Prospects*. Luxembourg: Office for Official Publications of the European Communities.

European Commission (ed.) (2005) *Employment in Europe: Recent Trends and Prospects*. Luxembourg: Office for Official Publications of the European Communities.

European Commission (2006) *Europeans and mobility: first results of an EU-wide survey*, Eurobarometer survey on geographic and labour market mobility. Online available: http://www.migration-online.de/data/survey_report_en_1.pdf (accessed March 2010).

European Commission (ed.) (2008) *Employment in Europe. Recent Trends and Prospects*, Luxembourg: Office for Official Publications of the European Communities.

European Commission (2010): Europe 2020. A European strategy for smart, sustainable and inclusive growth.

European Council, Presidency Conclusions (2000a) 'Lisbon European Council, 23 and 24 March', URL (consulted Feb. 2006): http://www.bologna-berlin2003.de/pdf/PRESIDENCY_CONCLUSIONS_Lissabon.pdf.

European Council, Presidency Conclusions (2000b) 'Nice European Council Meeting 7, 8, and 9 December. Online available: http://www.consilium.europa.eu/ueDocs/cms_Data/docs/pressdata/en/ec/00400-r1.%20ann.en0.htm (accessed March 2010).

European Parliament (2010) 'Parliament set to gain new powers in its relations with the Commission', Press Service, Institutions - 09-02-2010. Online available: http://www.europarl.europa.eu/news/expert/infopress_page/008-68606-039-02-07-901-20100208IPR68605-08-02-2010-2010-false/default_en.htm (accessed March 2010).

Fahey, Tony (2007) 'The case for an EU-wide measure of poverty', *European Sociological Review*, 23, 1: 35-47.

Falkner, Gerda, Treib, Oliver, Hartlapp, Miriam, and Leiber, Simone (2005) *Complying with Europe. EU Harmonisation and Soft Law in the Member States*, Cambridge: Cambridge University Press.

Ferrera, Maurizio (2005a) *The boundaries of welfare. European integration and the new spatial politics of social protection*, Oxford: Oxford University Press.

Ferrera, Maurizio (2005b) 'Friends of Foes? The EU and National Social Models', Paper prepared for the European Social Model Project, Policy Network, London.

Ferrera, Maurizio(2008) 'The European Welfare State: Golden Achievements, Silver Prospects', *West European Politics*, 31, 1: 82-107.

Florida, Richard (2002) *The Rise of the Creative Class: And How It's Transforming Work, Leisure, Community and Everyday Life*, New York: Basic Books.

Fraser, Neil, and Norris, Paul (2007) 'Data on the functions of government: where are we now?' in F. G. Castles (ed.) *The Disappearing State? Retrenchment Realities in an Age of Globalisation*. Cheltenham: Edward Elgar.

Gerhards, Jürgen (2007) *Cultural Overstretch? The Enlargement of the European Union and the Cultural Differences between Old and New Member States and Turkey*. London/New York: Routledge.

Gerhards, Jürgen and Hölscher, Michael (2005) *Kulturelle Unterschiede in der Europäischen Union. Ein Vergleich zwischen Mitgliedsländern, Beitrittskandidaten und der Türkei*, 2. ed., Wiesbaden: Verlag für Sozialwissenschaften.

Geyer, Robert, Ingebritsen, Christine, and Moses, Jonathon W. (eds.) 2000 *Globalisation, Europeanisation and the End of Scandinavian Social Democracy?* Basingstoke: Palgrave.

Giddens, Anthony (2005) *The World Does not Owe us a Living*. The Future of the European Social Model, Policy network paper.

Haller, Max (2008) *European Integration as an Elite Process. The Failure of a Dream?* New York/London: Routledge.

Hay, Colin (2006) 'What's Globalization got to do with it? Economic Interdependence and the Future of European Welfare States', *Government and Opposition* 41, 1: 1-22.

High Level Group (chaired by Wim Kok) (2004) *Facing the challenge. The Lisbon strategy for growth and employment*, Luxembourg: Office for Official Publications of the European Communities. Online available: http://ec.europa.eu/research/evaluations/pdf/archive/fp6-evidence-base/evaluation_studies_and_reports/evaluation_studies_and_reports_2004/the_lisbon_strategy_for_growth_and_employment__report_from_the_high_level_group.pdf (accessed March 2010).

Herzog, Roman and Gerken, Lüder (2008) 'Stoppt den Europäischen Gerichtshof', *Frankfurter Allgemeine Zeitung*, 8 September.

Höpner, Martin, and Schäfer, Armin (2008a) 'Grundzüge einer politökonomischen Perspektive auf die europäische Integration' in: Martin Höpner and Armin Schäfer (ed.) *Die Politische Ökonomie der europäischen Integration*, Frankfurt/New York: Campus, pp. 11-45.

Höpner, Martin, and Schäfer, Armin (2008b) 'Eine neue Phase der europäischen Integration: Legitmitätsdefizite europäischer Liberalisierungspolitik', in: Martin Höpner and Armin Schäfer (ed.) *Die Politische Ökonomie der europäischen Integration*, Frankfurt/New York: Campus, pp. 129-156.

Höpner, Martin (2008) *Usurpation statt Delegation: Wie der EuGH die Binnenmarktintegration radikalisiert und warum er politischer Kontrolle bedarf*, MPIfG Working Paper 08/12, Cologne: Max Planck Institute for the Study of Societies. Online available: http://www.mpifg.de/pu/mpifg_dp/dp08-12.pdf (accessed 24 March 2009).

Höpner, Martin (2010) *Warum betreibt der Europäische Gerichtshof Rechtsfortbildung? Die Politisierungshypothese*, MPIfG Working Paper 10/2, Cologne: Max Planck Institute for the Study of Societies. Online available: http://www.mpifg.de/pu/workpap/wp10-2.pdf (accessed 24 March 2009).

Höpner, Martin (2010, forthcoming) 'Von der Lückenfüllung zur Vertragsumdeutung: Ein Vorschlag zur Unterscheidung von Stufen der Rechtsfortbildung durch den Europäischen Gerichtshof', *Der moderne Staat,* 3.

Jobelius, Sebastian (2007) *Von unseren Nachbarn lernen: Ein Monitor sozialer Demokratie*, Internationale Politikanalyse, Bonn: Friedrich-Ebert-Stiftung.

Kuper, Bernd-Otto (1994) 'The Green and White Papers of the European Union: The Apparent Goal of Reduced Social Benefits', *Journal of European Social Policy* 4, 2: 129-137.

Kvist, Jon (2004) 'Does EU enlargement start a race to the bottom? Strategic interaction among EU member states in social policy', *Journal of European Social Policy*, 14, 3: 301-318.

Lepsius, M. Rainer (1993a) 'Die Europäische Gemeinschaft und die Zukunft des Nationalstaates', in: M. Rainer Lepsius, *Demokratie in Deutschland*, Chapter 12, Göttingen: Vandenhoeck & Ruprecht, pp. 249-264.

Lepsius, M. Rainer (1993b) 'Nationalstaat oder Nationalitätenstaat als Modell für die Weiterentwicklung der Europäischen Gemeinschaft', in: M. Rainer Lepsius, *Demokratie in Deutschland*, Chapter 13, Göttingen: Vandenhoeck & Ruprecht, pp. 265-285.

Levitas, Ruth (1996) 'The concept of social exclusion and the new Durkheimian hegemony', *Critical Social Policy*, 16: 5-20.

MPIfG (ed.) (2009) Streitgespräch „Eine gemeinsame EU-Sozialpolitik – wünschenswert, aber unmöglich? Newsletter *Gesellschaftsforschung,* 2/09: 6-9. Online available: http://www.mpifg.de/aktuelles/newsletter/MPIfG_Newsl_2-09.pdf (accessed March 2010).

OECD (2008) *Growing Unequal? Income Distribution and Poverty in OECD Countries*, Directorate for Employment, Labour and Social Affairs, Paris: OECD Publications.

Potucek, Martin (2008) The Welfare or the Wild Capitalism in Post-Communist Europe? Lecture at the EQUALSOC Midterm Conference, Berlin, Germany 11.-12. April.

Room, Graham (2002) Education and Welfare: Recalibrating the European Debate, *Policy Studies*, 23: 37-50.

Room, Graham (2008) Social Policy in Europe: Paradigms of Change, *Journal of European Social Policy*, 18, 4: 345-352.

Scharpf, Fritz W. (1984) 'Economic and Institutional Constraints of Full-Employment Strategies: Sweden, Austria, and West Germany, 1973-1982', in: John Goldthorpe (ed.) *Order and Conflict in Contemporary Capitalism*, Oxford: Clarendon Press, pp. 257-290.

Scharpf, Fritz W. (1996) 'Negative and Positive Integration in the Political Economy of European Welfare States', in: Gary Marks, Fritz W. Scharpf, Philippe C. Schmitter and Wolfgang Streeck (eds.) *Governance in the European Union*, London/Thousand Oaks/New Delhi: Sage, pp. 15-39.

Scharpf, Fritz W. (1999) *Governing in Europe: Effective and Democratic?* Oxford: Oxford University Press.

Scharpf, Fritz W. (2003) 'Legitimate Diversity: The New Challenge of European Integration', *Zeitschrift für Staats- und Europawissenschaften*, 1, 1: 32-60.

Scharpf, Fritz W. (2008) 'Negative und positive Integration', in: Martin Höpner and Armin Schäfer (ed.) *Die Politische Ökonomie der europäischen Integration*, Frankfurt/New York: Campus, pp. 40-87.

Scharpf, Fritz W. (2009a) 'Legitimacy in the Multilevel European Polity', European Political Science Review, 1, 2: 173-204.

Scharpf, Fritz W. (2009b) 'Legitimität im europäischen Mehrebenensystem', *Leviathan*, 37, 2: 244-280.

Scharpf, Fritz W. (2009c) *The Double Asymmetry of European Integration - Or: Why the EU Cannot Be a Social Market Economy*, MPIfG Working Paper 09/12, Cologne: Max Planck Institute for the Study of Societies. Online available: http://www.ciaonet.org/wps/mpifg/0018173/f_0018173_15587.pdf (accessed 24 March 2009).

Scharpf, Fritz W. (2009d) Streitgespräch Jo Leinen und Fritz W. Scharpf: „Eine gemeinsame EU-Sozialpolitik – wünschenswert, aber unmöglich? MPIfG Newsletter *Gesellschaftsforschung,* 2/09: 6-9. Online available: http://www.mpifg.de/aktuelles/newsletter/MPIfG_Newsl_2-09.pdf (accessed March 2010).

Scharpf, Fritz W., and Schmidt, Vivien A. (eds.) (2000) *Welfare and Work in the Open Economy*. Oxford: Oxford University Press.

Starke, Peter, Obinger, Herbert, and Castles, Francis G. (2008) 'Convergence towards where: in what ways, if any, are welfare states becoming more similar?', *Journal of European Public Policy,* 15, 7: 975-1000.

Swank, Duane (2002) *Global Capital, Political Institutions and Policy Change in Developed Welfare States*, Cambridge: Cambridge University Press.

Wickham, James (2002) *The end of the European social model: before it began?* Dublin: Employment Research Centre.

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Statistisches Bundesamt (ed.), in Zusammenarbeit mit dem Wissenschaftszentrum Berlin für Sozialforschung und dem Zentrum für Umfragen, Methoden und Analysen, Mannheim (ZUMA)
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Schriftenreihe der Bundeszentrale für politische Bildung, Band 450, Bonn 2004. Teil II „Objektive Lebensbedingungen und subjektives Wohlbefinden im vereinten Deutschland“, hrsg. von Roland Habich, Heinz-Herbert Noll, pp. 449-679.

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Wiesbaden: VS Verlag für Sozialwissenschaften 2004, 237 pages

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